

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**SANDY BENNETT**

Claimant

VS.

**WESTRIDGE ANIMAL HOSPITAL**

Respondent

AND

**AMERICAN MOTORIST INSURANCE CO.**

Insurance Carrier

Docket No. 204,275

**ORDER**

Claimant appeals from a Preliminary Hearing Order entered by Assistant Director David A. Shufelt, dated October 3, 1995 that denied claimant's request for preliminary benefits.

**ISSUES**

Assistant Director Shufelt denied claimant's request for preliminary benefits finding that the claimant failed to give notice of her accident within ten (10) days and further failed to show just cause for failure to give the ten (10) day notice. The claimant appeals this single issue.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The issue of timely notice is a jurisdictional issue that grants Appeals Board review of a preliminary hearing order. See K.S.A. 44-534a(a)(2).

Claimant alleged that her work activities, while employed by the respondent from May 12, 1995 through July 10, 1995, aggravated and exacerbated her bilateral carpal tunnel syndrome condition. She testified that she quit her employment on July 11, 1995 because a fellow employee was sexually harassing her and also because her hands were bothering her. Claimant claimed she notified the respondent that her hand problems were work related during a telephone conversation with Dr. Michael Cavanaugh, veterinarian, owner of Westridge Animal Hospital, the respondent herein, on July 11, 1995.

Prior to this claim, claimant had been diagnosed with bilateral carpal tunnel syndrome in June of 1994 while she was employed by the Third Judicial District Court Services in Topeka, Kansas. An EMG was performed on July 15, 1994 which was negative for median nerve entrapment. Subsequently, on June 20, 1995, while employed by this respondent, claimant settled her workers compensation claim for bilateral carpal tunnel syndrome against the Third Judicial District Court Services for a lump sum amount.

At the time of the preliminary hearing, September 21, 1995, claimant had been seen by her family doctor, Dr. Bradley W. Marples on July 11, 1995, who referred her to Wade B. Welch, M.D., for another EMG. Dr. Welch performed an EMG on July 27, 1995. The EMG was positive for mild to moderate bilateral median neuropathy at the wrist. Dr. Welch suggested that claimant be evaluated for carpal tunnel release surgery.

The claimant, her mother and Dr. Cavanaugh all testified in person before the Assistant Director at the preliminary hearing. Therefore, the Assistant Director had an opportunity to personally observe the witnesses and to assess their credibility. Claimant and her mother testified that during a telephone conversation that occurred on July 11, 1995 claimant notified Dr. Cavanaugh that she was terminating her employment not only because a fellow worker was sexually harassing her, but also because she was having problems with her hands due to work-related activities. Dr. Cavanaugh testified claimant did tell him that she had hand problems but did not relate them to her present work activities. It was his opinion that claimant's current hand problems were just a continuation of her hand problems she had as a result of her prior employment with the Third Judicial District Court Services.

The current notice statute, K.S.A. 44-520, makes a strict requirement that the employer be given notice of an accidental injury within ten (10) days unless just cause can be established by the claimant. If just cause is established, then the employee has seventy-five (75) days from the date of accident to provide notice. In the present case, Dr. Cavanaugh testified that he did not have notice of an accident having occurred during her employment with the respondent until he received a demand for benefits from claimant's attorney, on August 1, 1995. On the other hand, claimant alleged that she gave notice to the respondent during a telephone conversation with Dr. Cavanaugh on July 11, 1995.

The Assistant Director denied claimant's request for benefits finding that the claimant did not give timely notice and, further, did not show just cause for failing to give timely notice. In so finding, the Assistant Director had to give more weight to Dr. Cavanaugh's testimony than that of the claimant's or her mother's testimony. For preliminary hearing purposes, the Appeals Board gives deference to the findings of the Assistant Director as he was able to personally observe the witnesses' credibility.

Although the claimant raised both the issues of notice within ten (10) days and failure to show just cause for failure to give notice within ten (10) days, claimant only argued the notice within ten (10) days issue and did not argue the just cause issue. Claimant's position is that she gave notice within ten (10) days, not that she had just cause for her failure to give such notice. The preliminary hearing evidentiary record established that the claimant had previous experience with workers compensation procedures and nevertheless did not request the respondent to provide her with medical treatment until August 1, 1995. In addition, the medical records admitted do not indicate that the claimant related her present hand symptoms to her work activities for the respondent. Further, the record indicates that the primary reason for claimant quitting her job with the respondent was not because of her hands, but was because of alleged sexual harassment by a fellow employee. Claimant also testified that one of the reasons she quit her job was a result of her worsening hand symptoms. However, claimant applied for and received unemployment benefits after stating she was ready and able to work.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Assistant Director David A. Shufelt, dated October 3, 1995, that denied claimant's request for preliminary benefits, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c:     George H. Pearson, Topeka, Kansas  
       Mark E. Kolich, Kansas City, Kansas  
       David A. Shufelt, Assistant Director  
       Philip S. Harness, Director